

COMMONWEALTH OF PENNSYLVANIA	IN THE CRIMINAL COURTS OF THE COUNTY
VS	OF
<u>FABIAN D. SMART</u> (Name of Defendant)	<u>Clinton County</u>
	Criminal Action No. <u>175</u> of _____ 2 <u>002</u>

## ORDER

AND NOW this 2nd day of Oct., 2007 Upon consideration of the foregoing motion:

1. ☐ The motion is returned to defendant for amendment as follows, such amendment to be made on or before \_\_\_\_\_, 2\_\_\_\_\_

FILED  
CLINTON COUNTY, PA  
2007 OCT -3 AM 11:10  
SHERRY L. YARISON  
PROTHONOTARY & CLERK

2. ☐ A rule is granted upon the Commonwealth of Pennsylvania to show cause why a hearing should not be granted. The rule is returnable on or before \_\_\_\_\_ 2\_\_\_\_\_

3. ☒ The request to proceed as a poor person, without the payment to costs, is ☒ granted ☐ denied.

4. ☒ Upon finding that defendant is unable to obtain a lawyer DAVID A. STROUSE Esq., is appointed to represent him/her.

5. ☒ The Clerk of Court is ordered and directed to do the following forthwith:

- (a) To serve a copy of this motion and this order upon the District Attorney of Clinton County.
- (b) To send a copy of this motion and this order to DAVID A. STROUSE Esq., the lawyer for the defendant.
- (c) To send a copy of this order to the defendant.

6. ☒ Counsel For Defendant shall notify the Court by JAN 1, 2008, if He wishes to Amend the PCRA Petition.

*[Signature]*

DC-198  
Rev. 7-01

## MOTION FOR POST CONVICTION COLLATERAL RELIEF

<p>COMMONWEALTH OF PENNSYLVANIA VS</p> <p><u>FABIAN D. SMART</u></p> <p>(Name of Defendant)</p>	<p>COURT AND DOCKET NUMBERS</p> <p>FILED CLINTON COUNTY, PA 2007 OCT -1 A 9:50 To be filled in by Clerk of Court SHERRY L. YARRISON PROthonotary &amp; Clerk</p>
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NOTE: List below those informations or indictments &amp; offenses for which you have not completed your sentence.

## INFORMATION OR INDICTMENT NUMBERS:

CC2502A, CC0903, CC2502A, CC0903, CC2901

## I WAS CONVICTED OF THE FOLLOWING CRIMES:

Murder First Degree, Criminal Conspiracy First Degree, Kidnapping,  
Criminal Conspiracy to Kidnapping

## 1. MY NAME IS:

FABIAN D. SMART

## 2. I AM NOW

- (a) ☐ On Parole (b) ☐ On Probation (c) ☒ Confined in S.C.I-GREENE  
 (d) ☐ Residing at 175 Progress Drive, Waynesburg, PA 15370

3. I WAS SENTENCED ON October 21, 2004 TO A TOTAL TERM  
 OF LIFE, COMMENCING ON January, 24, 2005 BY  
 JUDGE(S) RICHARD SAXTON

FOLLOWING A: ☒ Trial by jury ☐ Plea of Guilty  
☐ Trial by a judge without a jury ☐ Plea of nolo contendere  
 I am ☐ Serving ☐ Waiting to serve The Sentence Imposed

## 4. I AM ELIGIBLE FOR RELIEF BECAUSE OF:

- ☒ (I) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- ☒ (II) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- ☐ (III) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
- ☐ (IV) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
- ☒ (V) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
- ☐ (VI) The imposition of a sentence greater than the lawful maximum.
- ☐ (VII) A proceeding in a tribunal without jurisdiction.

5. THE FACTS IN SUPPORT OF THE ALLEGED ERROR(S) UPON WHICH THIS MOTION IS BASED ARE AS FOLLOWS: (State facts clearly and fully; argument, citations, or discussions of authorities shall not be included.)

(A) I know the following facts to be true of my own personal knowledge:

The Court erred in denying my motion for change of venue/venir,  
 Motion to declare CLINTON COUNTY'S jury pool unconstitutional,  
 Appellant also argues that he is entitle to a new trial due to  
 the pervasive and accumulated prosecutorial misconduct, Verdict  
 was against the weight of the evidence, Ineffective assistance  
 of counsel

(B) The following facts were made known to me by means other than my own personal knowledge (Explain how and by whom you are informed):

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

(C) In the event my appeal is allowed as requested under #4, the following are the matters which I intend to assert on that appeal (Specify the matters to be asserted if appeal is allowed)

CLINTON COUNTY was in violation of 42 Pa.C.S.A § 4521(a) and  
 the Sixth ADMENDMENT of the United States Constitution. Trial  
 Counsels was ineffective for failing to call certain witnesses,  
 investigating certain witnesses, not having evidence tested(  
 Request room to admend once counsel is appointed). Trial Court  
 Erred in denying Appellants motion for change of venue/venir

**6. SUPPORTING EXHIBITS**

(A) In support of this motion I have attached as exhibits:

- ☐ Affidavits [Exhibit(s) No. \_\_\_\_\_]
- ☐ Records [Exhibit(s) No. \_\_\_\_\_]
- ☐ Other Supporting Evidence [Exhibit(s) No. \_\_\_\_\_]

(B) I have not attached any affidavits, records or other supporting evidence because

Request room to admend once counsel is appointed**7. I HAVE TAKEN THE FOLLOWING ACTION(S) TO SECURE RELIEF FROM MY CONVICTION(S) OR SENTENCE(S):**

(A) Direct Appeal (IF "YES," name the court(s) to which appeal(s) was/were taken, date, term and number, and result.)

☒ YES ☐ NOTimely post conviction motion November 1, 2004 No-175-02denied. Superior Court October 19, 2006 NO. 588 MDA denied. SupremeCourt of Pennsylvania November 17, 2006 No. 588MDA denied

(B) Previous proceedings in the courts of the Commonwealth of Pennsylvania

☐ YES ☒ NO

(IF "YES," name the type of proceedings (such as habeas corpus, etc.) — including former proceedings under the Post Conviction Hearing Act the Court(s) in which petition(s) was/were filed, date, term and number, and result, including all appeals.)

(C) Habeas Corpus or other petitions in Federal Courts

☐ YES ☒ NO

(IF "YES," name the district in which petition(s) was/were filed, date(s), Court Number—civil action or miscellaneous, and result, including all appeals.)

(D) Other legal proceedings

☐ YES ☒ NO

(IF "YES," give complete details—type of action, court in which filed, date, term and number, and result, including all appeals.)

**8. FOLLOWING MY ARREST, I WAS REPRESENTED BY THE FOLLOWING LAWYER(S): (Give the lawyer's name and the proceeding at which he/she represented you.)**

RONALD C. TRAVIS, Esquire-pretrial, trial, direct appeal

ERIK R. LINDHARDT, Esquire-pretrial, trial direct appeal

RONALD PRESSLY, ESQUIRE- pretrial

**9. I PREVIOUSLY CHALLENGED MY CONVICTION IN THE FOLLOWING COURTS:**

Court	Caption	Term Number	Attorney	Relief Requested
CLINTON COUNTY COURT OF COMMON PLEAS,	post conviction motion No. 175-02			
Mr. Travis/Mr. Lindhardt	vacate sentence new trial.		Superior Court of Pa	
October 19, 2006 No. 588MDA	vacate sentence new trial.		Supreme Court of Pa	
hear my case	vacate my sentence new trial			

**10. THE ISSUES WHICH I HAVE RAISED IN THIS MOTION HAVE NOT BEEN PREVIOUSLY LITIGATED OR ONE OF THE FOLLOWING APPLIES:**

- ☒ (I) The allegation of error has not been waived.
- ☒ (II) If the allegation of error has been waived, the alleged error has resulted in the conviction or affirmation of sentence of an innocent individual.

The failure to litigate this issue(s) prior to or during trial or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel.

**11. BECAUSE OF THE FOREGOING REASONS, THE RELIEF WHICH I DESIRE IS:**

- (A) ☒ Release from custody and discharge
- (B) ☒ A new trial
- (C) ☐ Correction of Sentence
- (D) ☐ Other Relief (Specify): \_\_\_\_\_

12. I request an evidentiary hearing. I certify, subject to the penalties for unsworn falsification to authorities set forth at 18 Pa.C.S. § 4904, that the following persons will testify to the matters stated. I have attached to this petition all documents material to the witness' testimony.

REQUEST ROOM TO ADMEND ONCE COUNSEL IS APPOINTED

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Date of Birth: \_\_\_\_\_

Witness Testimony: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Date of Birth: \_\_\_\_\_

Witness Testimony: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Date of Birth: \_\_\_\_\_

Witness Testimony: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Date of Birth: \_\_\_\_\_

Witness Testimony: \_\_\_\_\_

13. Based upon the exceptional circumstances set forth below, I request that the District Attorney produce the following documents:

The Judge at trial requested that the District Atorney handover the negatives to some pictures and any other evidence that was not turnedover prior to trial.

14. I ask that the Court consider the following argument, citation and discussion of authorities:

Prosecutorial Misconduct- Comm V. Hickman 319 Pa. Sup 261 466 A.2d

TRIAL COURT ERRED IN DENYING APPELLANTS MOTION TO DECLARE CLINTON

COUNTY'S JURY POOL IN VIOLATION OF 42 Pa. C.S.A § 4521(a), 4521(d)

4524 and the SIXTH Admendmant to the United States Constitution.

Trial Court erred in denying Appellant's motion for change of Venue/

Venir Comm V. Bridges 563 Pa. 757 A.2d 859, Comm V. Weiss 565 Pa 504,

366 A.2d. Verdict against the weight of evidence Comm V. McClosky

Ineffective Assistance on Counsel Comm V. Sullivan 820 A.2d 795

15.

(A) I am ☐ ABLE ☒ NOT ABLE to pay the cost of this proceeding.

I have \$ 1.65 in my prison account.

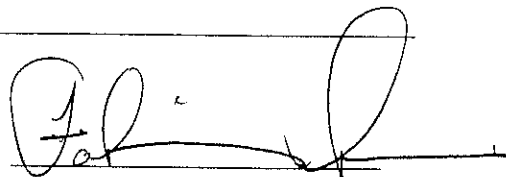
(B) My other financial resources are:

16. (A) ☒ I do not have a lawyer and I am without financial resources or otherwise unable to obtain a lawyer.

(1) ☒ I request the court to appoint a lawyer to represent me.

(2) ☐ I do not want a lawyer to represent me.

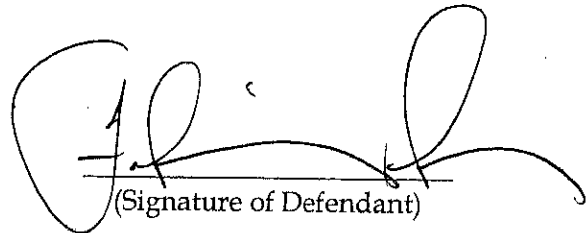
(B) ☐ I am represented by a lawyer. (Give name and address of your lawyer.)

  
(Signature of Defendant)



**UNSWORN DECLARATION**

I, FABIAN D. SMART do hereby verify that  
the facts set forth in the above motion are true and correct  
to the best of my personal knowledge or information and  
belief, and that any false statements herein are made sub-  
ject to the penalties of Section 4904 of the Crimes Code  
(18 Pa. C.S. § 4904), relating to unsworn falsification to  
authorities.



(Signature of Defendant)

No Notary  
Required

IN THE COURT OF COMMON PLEAS OF CLINTON  
PENNSYLVANIA  
DIVISION

FILED  
CLINTON COUNTY, PA  
2007 OCT 1 A 9 52  
SHERRY L. YARRISON  
PROTHONOTARY & CLERK

COMM PENNSYLVANIA  
Plaintiff  
vs  
FABIAN SMART  
Defendant

No. 175-2

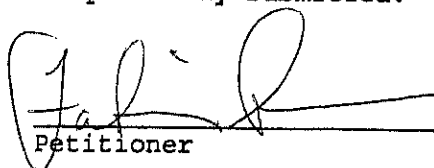
APPLICATION FOR APPOINTMENT OF COUNSEL

TO THE HONORABLE JUDGE OF THE ABOVE NAMED COURT:

The Petitioner, FABIAN SMART, residing at SCI Greene, 175 Progress Drive, Waynesburg, PA 15370, respectfully request that this Honorable Court would appoint counsel in the matter of the captioned cause of action. In support of this petition the Petitioner avers that:

1. I am unable to obtain counsel to represent me in this matter because I am currently confined in a State Correctional Facility at the aforementioned address.
2. I am currently employed at the institution as a DIETARY WORK compensated at the rate of ¢ 33 cents per hour.
3. I am uneducated in the sciences and mechanics of law; and do not have access to computers, telephones and/or access to Westlaw or Lexus.


Respectfully Submitted:

  
Petitioner

**UNSWORN DECLARATION**

I, FABIAN SMART, do hereby verify that the facts set forth in the within Petition are true and correct to the best of my knowledge, information and belief and that any false statements herein are made subject to the penalties of 18 PA.C.S.A. §4904, relating to unsworn falsification to authorities.

Date: ) 09 / 27 / 07

  
Pro se, Petitioner

**PROOF OF SERVICE**

I, FABIAN SMART, hereby verify that I am this day serving the foregoing document[s] in manner listed below which service satisfies the requirements of Pa.R.A.P. 121. this service also satisfies the requirements of the Prisoner's Mailbox Act;  
(Com, v. Jones 700 A.2d 423; Houston v. Lack 108 S.Ct. 2379):  
Service by First Class Mail:

FILED  
CLINTON COUNTY, PA  
2007 OCT -1 A 9 52  
SHERRY L. YARRISON  
PROTHONOTARY & CLERK

Dated: 09/27/07



Pro Se Defendant  
SCI Greene  
175 Progress Drive  
Waynesburg, PA 15370